

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KERRY LANGSTAFF, et al

Respondents,

v.

ALLEN A. MITCHELL, M.D.,
SAMUEL M. LESKO, M.D., and
TRUSTEES OF BOSTON UNIVERSITY

Petitioners.

§ Civil Action No. 04-MBD-10137
§
§ Related Civil Action:
§ United States District Court for the
§ Northern District of California, San
§ Jose Division
§ Civil Action No. 03-CV-01116
§ KERRY LANGSTAFF, et al vs.
§ MCNEIL CONSUMER &
§ SPECIALITY
§ PHARMACEUTICALS, et al
§
§

**RESPONDENTS' MEMORANDUM IN SUPPORT OF THEIR
MOTION FOR EXPEDITED HEARING PURSUANT TO
LOCAL RULE 40.4 ON PETITIONERS MOTION TO QUASH
DEPOSITION SUBPOENAS AND SUBPOENAS DUCES TECUM
PURSUANT TO FED. R. CIV. P. 45(c)(3)(A) and (B)**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Respondents, by and through their attorney of record, and files this Memorandum in Support of their Motion for Expedited Hearing Pursuant to Local Rule 40.4 on Petitioners' Motion to Quash Deposition Subpoenas and Subpoenas Duces Tecum Pursuant to Fed. R. Civ. P. 45(c)(3)(A) and (B). Respondents served subpoenas on Drs. Allen Mitchell and Samuel Lesko, employees of the Slone Epidemiology Center¹ at Boston University (hereinafter "Boston University") at the time of the Boston University Fever Study, to be deposed on May 26 and 27, 2004. Respondents seek to depose both doctors and to require production of certain documents as such discovery is crucial and goes to the heart of Respondents suit against McNeil Consumer & Specialty Pharmaceuticals (hereinafter "McNeil") and Johnson & Johnson filed in the United States District Court for the Northern District of California. Boston University moved to quash the depositions on April 28, 2004 and Petitioners filed a Response on May 14, 2004.

¹ Dr. Mitchell is the Director of the Slone Epidemiology Center. Dr. Lesko was the senior investigator until 2000.

I. BACKGROUND

This is a pharmaceutical products liability case involving the injury and untimely death of 8-year-old Kaitlyn Sierra Langstaff from Stevens-Johnson Syndrome/Toxic Epidermal Necrolysis (SJS/TEN) caused by an adverse reaction to Children's Motrin. Defendants McNeil and Johnson & Johnson relied upon the results from the Boston University Fever Study, which Drs. Mitchell and Lesko have crucial information regarding, to support the approval of the over the counter marketing of Children's Motrin. This study was the critical safety study that McNeil used to claim the safety of ibuprofen in the treatment of fever in children in the U.S. Accordingly, Respondents seek to depose and obtain documents, pursuant to subpoenas duces tecum, from Drs. Mitchell and Lesko.

II. COMPELLING NEED FOR EXPEDITED HEARING

The underlying suit filed in the United States District Court for the Northern District of California has a discovery deadline of June 17, 2004. This discovery deadline has been extended twice and the Court has represented that no further extensions will be granted. Thus, it is imperative to Respondents to depose Drs. Mitchell and Lesko on May 26 and 27, 2004, to review the applicable responses to the subpoenas duces tecum prior to the close of discovery, and to conduct any necessary additional discovery that stems from Drs. Mitchell and Lesko. Respondents bring before this Court this Motion for Expedited Hearing pursuant to Local Rule 40.4 to insure their ability to comply with the deadlines set by the sister Court.

Respondents request a hearing to be set for May 20, 21, or 24, 2004, recognizing that such a request strains the time and resources of the Court, Respondents are amenable to any date

and time upon which the Court is available.² As Respondents have also filed a separate Motion to Compel³ the Custodian of Records for Dr. Allen A. Mitchell and the Custodian of Records for the Slone Epidemiology Center to Comply with Subpoenas Duces Tecum, which includes interwoven issues with the Motion to Quash, Respondents also request for both matters to be heard by the Court at the same time in the interest of judicial economy.

The depositions of Drs. Mitchell and Lesko are of incredible importance to Respondents case due to their unique knowledge of the Boston University Fever Study. In order to comply with the Order regarding discovery deadlines set by the United States District Court of the Northern District of California, it is imperative that Respondents go forward with the scheduled depositions on May 26 and 27, 2004. Accordingly, Respondents find compelling need to request an expedited hearing regarding the Motion to Quash their depositions.

III. CONCLUSION

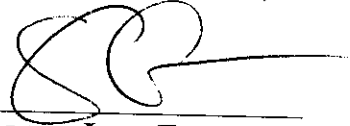
Local Rule 40.4 provides for expedited hearings in emergencies and special proceedings. Respondents respectfully ask the Court to set this matter for hearing at the Court's earliest convenience for May 20, 21, or 24, 2004.

WHEREFORE, PREMISES CONSIDERED, Respondents respectfully request this Court grant Respondents Motion for Expedited Hearing and grant Respondents any and all other relief to which they may be justly entitled.

² As stated in the Certificate of Conference, Boston University does not oppose a hearing on this matter and on the interwoven Motion to Compel if set for Monday, May 24, 2004. Boston University takes such a position based upon its time period to respond to the Motion to Compel.

³ The Motion to Compel is civil action number 04-MBD-10128, which was originally assigned to Judge Young. However, the Clerk's office has represented that it will be moved to Judge O'Toole's Court for the sake of consistency and judicial economy.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that the foregoing Motion for Expedited Hearing Pursuant to Local Rule 40.4 on Petitioners' Motion to Quash Deposition Subpoenas and Subpoenas Duces Tecum Pursuant to Fed. R. Civ. P. 45(c)(3)(A) and (B) was served on Boston University and all counsel of record via facsimile and U.S. Mail on the ____ day of May, 2004.



Edward Paul Coady

CERTIFICATE OF CONFERENCE

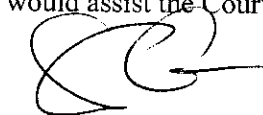
I certify that counsel for Respondents and counsel for Boston University have discussed this matter via telephone on May 17, 2004. Boston University only opposes this Motion as it requests a hearing date prior to Monday, May 24, 2004.



Edward Paul Coady

REQUEST FOR ORAL ARGUMENT

I certify that Respondents wish to be heard by the Court regarding this matter as expeditiously as possible and believe that oral argument would assist the Court.



Edward Paul Coady